UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FONAR CORPORATION,	)	
Plaintiff,	)	Civil Action No. CV-91-3805 (Wexler, J.)
-against-	)	
DECCAID SERVICES, INC., EQUI MED LEASING, INC., MEDICAL FUNDING OF AMERICA, INC., DAVID SMITH, MORTON MACKOF, STEPHEN STECKLER, LOUIS TREGLIA and PETER KIM,	)	ORDER
Defendants.	)	

CONFIDENTIALITY AND PROTECTIVE ORDER

WHEREAS, documents or information proprietary to parties or witnesses containing confidential financial, technical or commercial information and/or trade secrets not publicly disclosed or generally known (hereinafter individually and collectively referred to as "Company Secrets") may be produced or disclosed in the course of discovery proceedings in this action; and

WHEREAS, disclosure of Company Secrets would cause undue burden, expense, injury or oppression to a party or witness, and good cause exists for entry of a confidentiality and protective order pursuant to Rule 26, Fed. R. Civ. P.; and

WHEREAS, the Court wishes the parties to proceed expeditiously with discovery in this action without burdening the Court with unnecessary procedural litigation;

IT IS HEREBY STIPULATED AND AGREED that the following rules and procedures shall govern the disclosure of confidential and proprietary information in this action:

1. Any information disclosed by a party or a non-party witness (the "Producing Party") in this litigation that the Producing Party reasonably believes to constitute a trade secret or other confidential or proprietary information may be designated as "Confidential Information" by the Producing Party. In addition, a Producing Party may (subject to the provisions of paragraph 2 below) designate certain information as "Specially Confidential Information". The "Specially Confidential", as used herein, may also be referred to as "Confidential -- For Counsel Only", or "Confidential -- Attorneys' Eyes Only". All references to "Specially Confidential" below shall be deemed to include these other equivalent references.

2. The category of "Specially Confidential Information" is intended to be limited to that confidential information which, if disclosed to another party herein or to the public at large, would compromise or threaten important business interests of the Producing Party.

3. Confidential or Specially Confidential Information disclosed to a party (the "Receiving Party") in the course of this litigation: (a) shall not be used by the Receiving Party for any purpose other than the prosecution or defense of this litigation; and (b) shall

not be disclosed by the Receiving Party except in compliance with the terms hereof. This provision shall survive termination of a Receiving Party's involvement in this litigation for a period of ten years.

4. Subject to the other terms of this Stipulation, Confidential Information may be made available by a Receiving Party only to the following persons for use in connection with their duties in the course of this litigation:

(a) attorneys of record herein and other members of, or attorneys regularly employed by, their firm(s) who are working on this litigation ("Counsel of Record");

(b) persons regularly employed by such attorneys or their firm(s), working under the supervision of Counsel of Record in connection with this litigation;

(c) persons who have been retained by the Receiving Party specifically to provide expert assistance or advice in this litigation (collectively referred to as "Independent Advisors"), and persons regularly employed by them, to the extent necessary when working under the supervision of such an Independent Advisor in connection with this litigation;

(d) the officers, directors and employees of the Receiving Party with responsibilities relating to the litigation or assisting counsel in the conduct of the litigation;

(e) the Court and its employees;

(f) court reporters or stenographers, or other

persons preparing transcripts of testimony under the supervision of a court reporter or stenographer, who have been provided with a copy of this Stipulation and have agreed to abide by its terms; and

(g) any other person upon such terms and conditions as the parties may agree or as the Court may hereafter by order direct; provided that any person to whom Confidential or Specially Confidential Information is disclosed pursuant to subparagraph (c) above shall, prior to such disclosure, execute a declaration under penalty of perjury in the form annexed hereto as Exhibit A; and that any person to whom Confidential Information is disclosed pursuant to subparagraph (d) above shall, prior to any such disclosure, execute a declaration under penalty of perjury in the form annexed hereto as Exhibit B. Such declarations shall be retained by Counsel of Record making such disclosure, and shall be made available to Counsel of Record for the Producing Party upon a showing of good cause.

5. Specially Confidential Information may be disclosed only to the persons described in subparagraphs 4(a), (b), (e), (f) and (g) above, and to the persons described in subparagraph 4(c) above subject to the provisions of Paragraph 6 below and the other terms hereof.

6. At least fifteen (15) days prior to the disclosure of Specially Confidential Information to any Independent Advisor, Counsel of Record for the Receiving Party shall inform Counsel of Record for the Producing Party in writing of the name, address and

usual employment affiliation of the Independent Advisor, and shall furnish therewith (a) a copy of a current resume or curriculum vitae of the Independent Advisor, (b) a list of all employment, consulting relationships and/or engagements in which the Independent Advisor is currently involved, or has been involved for the preceding three years, (c) a description of the nature of the Specially Confidential Information to be disclosed (e.g., sales information or development information), sufficient in detail to allow the Producing Party to determine in good faith whether to object to disclosure of such information to the Independent Advisor, and (d) a copy of an executed declaration made by the Independent Advisor in the form annexed hereto as Exhibit A. Such disclosure shall not be a waiver of any otherwise applicable privilege or of any rights of the Producing Party pursuant to Rule 26(b), Fed. R. Civ. P.

7. If the producing Party objects to the disclosure of Specially Confidential Information to an Independent Advisor, it shall so notify the Receiving Party in writing within fourteen (14) days of the identification by the Receiving Party of the Independent Advisor. The parties shall then confer in good faith in an attempt to resolve the dispute. If the parties are unable to do so, and the Producing Party shall move within twenty-five (25) days of its objection for an appropriate protective order. During the period to confer on such an objection, disclosure shall not be made by the Receiving Party to any Independent Advisor to whom the Producing Party has objected pending resolution of the Producing Party's objection. If the Producing Party files a motion for an appropriate protective order within the time period allowed above, no such disclosure shall be made until resolution of the motion. The Producing Party's burden of going forward

with such a motion shall not alter any otherwise applicable burden of proof with respect to the substance of the motion.

8. A Producing Party's failure to object to disclosure to an Independent Advisor at the time of his or her identification shall not preclude the Producing Party from later asserting, in writing, a good faith objection to the further availability of Confidential or Specially Confidential Information to such person. A Producing Party's assertion of an objection pursuant to this paragraph shall not, in itself, require the Independent Advisor to return, or to cease working with, any Confidential or Specially Confidential Information previously provided to him or her, but the Receiving Party shall make no further disclosure of Confidential or Specially Confidential Information to the Independent Advisor following receipt of the objection until fifteen (15) days thereafter. The parties shall confer in good faith to attempt to resolve any objection asserted pursuant to this paragraph. If the parties are unable to do so, and the Producing Party continues to object, the Producing Party shall move within fourteen (14) days of its objection for an appropriate protective order. If a Producing Party files a motion for an appropriate protective order within the time period allowed above, no such further disclosure shall be made until the motion is resolved in a manner permitting the disclosure.

9. Any document disclosed in this litigation containing Confidential Information and all copies thereof ("Confidential Documents") shall be so designated by the Producing Party by marking each page thereof as "CONFIDENTIAL". Any document disclosed in this litigation containing Specially

Confidential Information and all copies thereof ("Specially Confidential Documents") may be so designated by the Producing Party by marking each page thereof substantially as follows: "SPECIALLY CONFIDENTIAL," "CONFIDENTIAL -- FOR COUNSEL ONLY", or "CONFIDENTIAL -- ATTORNEY'S EYES ONLY".

10. If copies of documents are not provided to the Receiving Party prior to inspection, the Producing Party need not mark the documents prior to initial inspection. For purposes of such an initial inspection and until copies are provided, all documents shall be considered "Specially Confidential". However, any copies provided to the Receiving Party must be marked with the appropriate notice to be treated as Confidential or Specially Confidential.

11. In the event that (pursuant to the other terms hereof) Confidential or Specially Confidential Information is disclosed or discussed in a deposition conducted herein, any deposition transcript or transcript excerpt containing or referring to such information and all copies thereof ("Confidential Excerpts" and "Specially Confidential Excerpts", respectively), may be so identified by the Producing Party on the record of the deposition. If the Producing Party requests "Confidential" or "Specially Confidential" treatment on the record of the deposition, for a period of thirty-one (31) days following receipt of the transcript of the deposition, the Receiving Party shall treat the transcript in its entirety as so designated; in that event, the Producing Party shall, within thirty (30) days of its receipt of the transcript, serve the Receiving Party with a written confidentiality designation, indicating by page and line number those portions of the transcript or

transcript excerpts it deems Confidential or Specially Confidential. Subject to any later agreement or order, any portion of a deposition which is not designated by the Producing Party within thirty days as Confidential or Specially Confidential by timely written designation will be treated as non-confidential information.

12. All interrogatories and interrogatory answers (or portions thereof), and all requests for admission and responses thereto (or portions thereof), that contain Confidential or Specially Confidential Information (collectively referred to as "Confidential Discovery Pleadings" or "Specially Confidential Discovery Pleadings", respectively) may be so designated by the Producing Party at the time of service and by prominently typing on a cover page thereof the appropriate notice in the following form:

> "Confidential [or Specially Confidential] -- This document contains material designated as Confidential [or Specially Confidential] by agreement of the parties to this lawsuit. Access to that material is limited by the parties' agreement. Any unauthorized access or use may constitute a violation of that agreement."

In the event that the Court enters this Confidentiality Stipulation as an order, the notice shall read:

> "...contains material designated as Confidential [or Specially Confidential] under the terms of an Order entered by the Court in this action. Access to the information in this document is limited by that Order, and any unauthorized access or

use may constitute a violation of the Court's Order."

Each response to an interrogatory or request for admissions (or portion thereof) for which the Producing Party seeks Confidential or Specially Confidential treatment must be separately designated by typing, immediately before each such response, "CONFIDENTIAL:" or "SPECIALLY CONFIDENTIAL:" or the equivalent language referred to above.

13. In addition to and notwithstanding any other provisions of this Confidentiality Stipulation, the following shall not be retained or stored at the regular business premises of the actual Receiving Party: (a) all Confidential Documents (produced in discovery), Confidential Excerpts and Confidential Discovery Pleadings (collectively, "Confidential Material"); (b) all Specially Confidential Documents (produced in discovery), Specially Confidential Excerpts and Specially Confidential Discovery Pleadings (collectively, "Specially Confidential Material"); and (c) all portions containing Specially Confidential Information of all Confidential Filings and sealed pleadings (as described below).

14. All documents and pleadings of any nature containing Confidential or Specially Confidential Information, and all copies thereof, shall be maintained by any person qualified to receive and to retain them under the terms of this Stipulation in a secure manner, intended to minimize any risk of the inadvertent disclosure thereof.

15. Additionally, Counsel of Record for the Receiving Party shall maintain a complete record of all Specially Confidential Material furnished to any person who is not a member of the firm(s), or otherwise

regularly employed by Counsel of Record. Such record shall show the date upon which each item of Specially Confidential Material was furnished to any such person. Such records shall be made available to Counsel of Record for the Producing Party upon a showing of good cause.

16. Any person to whom Confidential or Specially Confidential Information is disclosed (subject to the other terms hereof) shall treat that information in a manner reasonably calculated to preserve the appropriate degree of confidentiality of such information.

17. Subject to the other terms hereof, Confidential or Specially Confidential Information may be disclosed by a Receiving Party in pretrial depositions, to the extent that its use is necessary, only at the deposition(s) of:

(a) present directors, officers or employees of the Producing Party;

(b) an author, addressee or other person indicated as a lawful recipient of a Confidential or Specially Confidential Document;

(c) a person clearly identified in the Confidential or Specially Confidential Information, or in prior discovery, or by the deponent in his or her deposition (without prior disclosure of the specific Confidential or Specially Confidential Information) as a source of the specific Confidential or Specially Confidential Information to be disclosed at the deposition (provided that prior to any disclosure under this subparagraph (d), notice must be given to the Producing Party of the specific information so that it has a fair opportunity to seek a protective order, which

notice may be given at the time of the deposition; and the parties agree to cooperate, and if necessary to defer any such disclosure, to allow the Producing Party to seek such a protective order without delay);

(d) an Independent Advisor otherwise qualified under this Confidentiality Stipulation to receive such Information; or

(e) any person for whom prior authorization is obtained from the Producing Party or the Court.

17. At the request of a Producing Party, persons not entitled to receive Confidential and/or Specially Confidential Information shall be excluded from any portion of a deposition at which such information is, or is likely to be, discussed or disclosed.

18. Any pleading or other document containing a Producing Party's Confidential or Specially Confidential Information shall only be filed with the Court under seal, except that to the extent that the Receiving Party can, without undue burden or expense, segregate the Producing Party's Confidential or Specially Confidential Information from non-confidential information within the material it intends to file, it shall do so, e.g., by segregating the Producing Party's Confidential or Specially Confidential Information in a separate "Confidential Annex" or "Schedule of Confidential Exhibits" (a "Confidential Filing").

19. Within sixty (60) days of the conclusion of this action, all written materials, other than work product, containing Confidential and Specially Confidential Information disclosed in that action and that is in the possession, custody or control of the Receiving Party or its agents shall be destroyed or

turned over to Counsel of Record for the Producing Party. All persons who have received any Confidential or Specially Confidential Information in the course of that action shall provide a declaration under penalty of perjury stating that all such written materials, other than work product, containing Confidential or Specially Confidential Information in their possession, custody or control have been destroyed or turned over to Counsel of Record for the Producing Party. The provisions of this Stipulation restricting the communication and use of Confidential and Specially Confidential Information continue to be binding after the conclusion of this litigation, except: (a) there is no restriction on information introduced into evidence on the public record or otherwise disclosed publicly in Court, and (b) a party may seek written permission from the Producing Party to disclose such information or an order of the Court to dissolve or modify this Stipulation.

20. If Counsel of Record for the Receiving Party at any time objects to the designation or continued treatment of certain information as Confidential or Specially Confidential by the Producing Party, it shall so notify Counsel of Record for the Producing Party, and the parties shall then confer in good faith to attempt to resolve the dispute. If Counsel of Record shall be unable to agree, following such consultation, as to whether the information is appropriately designated, it shall be the responsibility of the Receiving Party to move for an Order requiring redesignation of the information in dispute. Unless and until such an Order is obtained, the original designation by the Producing Party shall stand.

21. Nothing herein shall be deemed to restrict in any way a Producing Party's own use of Confidential

or Specially Confidential Information disclosed by it in this litigation.

22. Inadvertent disclosure of any document or other information during discovery in this litigation, or inadvertent disclosure of Confidential or Specially Confidential Information without appropriate designation, shall be without prejudice to any claim that such document or other information is privileged, or Confidential or Specially Confidential, and no party shall be held to have waived any rights by such inadvertent disclosure.

23. The designation of any material in accordance with this Stipulation as constituting or containing Confidential or Specially Confidential Information is intended solely to facilitate the preparation and trial of this litigation. A party's treatment of such material as confidential in compliance with this Stipulation is not an admission or agreement by the party that the material constitutes or contains confidential or proprietary information.

24. This Stipulation and the procedures set forth herein shall not affect the rights of the parties to object to discovery on any grounds, nor shall it relieve a party of the necessity of proper response or objection to discovery requests, nor shall it preclude any party from seeking further relief or protective orders from the Court as may be appropriate under the Federal Rules of Civil Procedure, Federal Rules of Evidence or any other statute, rule or authority.

25. Nothing herein shall be construed to preclude any party from asserting that some information is of such a highly sensitive nature that its disclosure is

overly burdensome and oppressive under the circumstances.

26. Notwithstanding any other provision herein, proprietary computer software programs and proprietary schematic diagrams for components of the systems at issue herein shall be made available only to persons eligible to receive Specially Confidential Information and, initially, only for inspection under circumstances of controlled access. Following such inspection, and upon a showing of good cause by the Receiving Party to require the physical production of copies of such material, the Receiving Party and Producing Party shall confer in good faith to determine whether sufficient restrictions on such production satisfactory to the Producing Party, including, by way of example only, restrictions on further reproduction and the retention of such material for a limited period of time, can be agreed upon to permit such production to occur.

27. Notwithstanding any other provision herein, if documents constituting or revealing source code information for computer software programs are to be disclosed by any party, such disclosure, if any, shall occur only under restrictions reflecting confidentiality in addition to those set forth herein to govern Specially Confidential Information, including, but not limited to, inspection under circumstances of controlled access.

28. Nothing herein shall be construed to affect in any way the evidentiary admissibility of any document, testimony, or other matter at trial. The parties agree to confer in good faith and well in advance concerning procedures for the mutual preservation of confidentiality, as far as possible, in the course of any court hearing, proceeding or trial to be held herein. The designation of certain information as

Confidential or Specially Confidential pursuant to this Stipulation shall not, for that reason alone, bar its introduction or use at trial pursuant to such terms and conditions as the Court may deem appropriate, consistent with the need for a complete and accurate record of the proceedings. At the same time, nothing herein shall preclude a party from asserting an objection to the introduction or use of Confidential or Specially Confidential Information at trial on the grounds of its confidentiality.

29. The parties shall cooperate in good faith to preserve, as far as possible, the confidentiality of all sealed pleadings or other non-public material on appeal, including the joint filing of any necessary motions in the district or appellate court(s). If the parties are unable, despite their efforts, to preserve the confidentiality of such pleadings or other non-public material on appeal, a party shall not be precluded for that reason alone from asserting that a particular item, not previously disclosed publicly, should constitute part of the record on appeal; the parties shall, however, confer in good faith to attempt to agree whether such an item is necessary for inclusion in the record on appeal, and in the event they are unable to so agree, the Producing Party may seek the intervention of the appropriate court.

30. Nothing herein shall be construed to preclude any party from utilizing in any manner any information that it presently lawfully possesses, or which lawfully comes into its possession outside the discovery process in this litigation.

31. Nothing herein shall preclude any party from applying to the Court for any modification of the terms provided herein, as it may deem appropriate under the

circumstances; provided, however, that prior to such application, the parties involved shall make every effort to resolve the matter by agreement.

Dated: May 11, 1993
Hauppauge, New York

SO ORDERED:

s/Leonard D. Wexler
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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FONAR CORPORATION,

Plaintiff,

-against-

DECCAID SERVICES, INC., EQUI MED LEASING, INC., MEDICAL FUNDING OF AMERICA, INC., DAVID SMITH, MORTON MACKOF, STEPHEN STECKLER, LOUIS TREGLIA and PETER KIM,

Defendants.

CV 91-3805
(Wexler, J.)

----------x

DECLARATION RESPECTING CONFIDENTIALITY

_____, under the pains and penalties of perjury, declares:

1. I reside at in the City of and State of .

2. I have read and I understand the provisions of the Confidentiality Stipulation in this litigation. I hereby promise and agree to be bound by its terms, and promise and agree to maintain, pursuant thereto, the confidentiality of all information furnished to me which has been designated as Confidential Information under that Stipulation. I understand that these

promises are conditions precedent to my receipt of any such information.

3. I hereby submit to the jurisdiction of the United States District Court for the Eastern District of New York for the purpose of enforcing the terms of this Declaration.

Executed under penalty of perjury under the laws of the United States on _____, 199_.

_____

(Declarant's Signature)

MANDATE

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 11th day of January, one thousand nine hundred and ninety-three.

PRESENT: HON. ELLSWORTH A. VAN GRAAFEILAND
HON. GEORGE C. PRATT
HON. FRANK X. ALTIMARI

Circuit Judges,

FONAR CORPORATION,

Plaintiff-Appellee,

-v.- 92-7407

DECCAID SERVICES, INC., STEPHEN STECKLER, LOUIS TREGLIA, PETER KIM, MEDICAL FUNDING OF AMERICA, INC., and DAVID SMITH,

Defendants-Appellants,

EQUI MED LEASING, INC. and MORTON MACKOF,

Defendants.

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern [sic] District of New York and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ORDERED, ADJUDGED and DECREED that the order of said district court be and it hereby is vacated and remanded in part and dismissed in part in accordance with the opinion of this court.

ELAINE B. GOLDSMITH, Clerk
By: s/Edward J. Guardaro
Edward J. Guardaro
Staff Attorney

A TRUE COPY
ELAINE B. GOLDSMITH, Clerk
By: s/Kathy Brown
Deputy Clerk